IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

TRC.No. 150 of 2000()

TA.960/1997 of SALES TAX APPELLATE TRIBUNAL, ADDL.BENCH, ERNAKULAM
.....

PETITIONER/APPELLANT:

SOUTHERN GAS LIMITED,
UDYOGAMANDAL.

BY ADV. SRI.ANIL D. NAIR
SRI.ANIL D. NAIR

RESPONDENTS/RESPONDENT:

STATE OF KERALA

BY SPL.GOVT.PLEADER (TAXES) MR.V.V.ASOKAN

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

T.R.C.No.150 of 2000

Dated, this the 18th day of June, 2007

ORDER

H.L.Dattu, C.J.

The assessee being aggrieved by the orders passed by the Sales Tax Appellate Tribunal in T.A.No.960 of 1997 dated 30th November, 1999 for the assessment year 1991-92 is before us in this revision petition.

2. The assessee has framed the following questions of law for consideration and decision of this Court:

> "i) Whether on the facts and circumstances of the case and particularly in view of the decision of this Hon'ble Court in Padinjarekara Agencies case reported in 1996 KLJ (tax cases) 243, was the Tribunal justified in holding that M S Drums sold by the petitioner cannot be treated as packing material because containers were brought within the meaning of packing material under Section 5(3) of the KGST Act only with effect from 1.4.1992?
>
> ii) Should not the Tribunal have held that 'packing materials' is a relative concept and when the purchaser declares the use as for packing by issuing declaration in Form No.18 the same is bound to charge only at 2% which is the applicable rate for such sales?
>
> iii) Whether on the facts and circumstances was the Tribunal justified in holding that sale of M S Drums not supported by Form 18 are assessable at 8% applicable to metallic product and not at 6% as claimed by the petitioner?
>
> iv) Should not the Tribunal have held that since M S Drums is made off only miled steel item is assessable only at 6% as provided under Item 99 of the First Schedule to the KGST Act and not as metallic product as provided under Item 119 of the First Schedule?

3. Similar questions of law had come up for consideration of this Court in the case of Southern Gas Limited v. State of Kerala in T.R.C.No.118 of 2000. This Court after hearing the parties was of the opinion that the matter

requires to be reconsidered by the Tribunal. The observation made by the Division Bench of this Court is as under:

> "6. After hearing both sides, we feel that the matter has to be reconsidered by the Tribunal. The Tribunal has only considered the effect of Form 18 and the question whether the empty drums could be used as packing materials is not considered. We are of the view that the matter requires better attention by the Tribunal. Hence, we set aside the order passed by the Tribunal and direct the Tribunal to consider the matter again."

4. In view of what has been said by a Bench of this Court, we are of the opinion that even for this year also the matter requires to be reconsidered by the Tribunal.

5. We, therefore, allow this tax revision case and remit the matter to the Tribunal to consider the effect of Form No.18 and the question whether empty drums could be used as packing materials. Ordered accordingly.

6. In view of the order passed in the tax revision case, the relief sought in C.M.P.No.2322 of 2000 need not be considered by this Court. Accordingly, the said C.M.P. is also rejected.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns